

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT
for the
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SCRANTON

DEC 21 2018

PER 5
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Case No. 1:18cv2412
(Supplied by Clerk of Court)

C. Tate George

Petitioner

v.

United States of America
(Warden) D.K. White

*Respondent**(name of warden or authorized person having custody of petitioner)*

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: C. Tate George
(b) Other names you have used: Tate George
2. Place of confinement:
(a) Name of institution: FCI Allenwood - Low
(b) Address: PO Box 1000
White Deer, PA 17887
(c) Your identification number: 63223-050
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: Clarkson S. Fisher Building
and U.S. Courthouse Trenton, New Jersey
(b) Docket number of criminal case: 3:12-CR-204-01 (AET)
(c) Date of sentencing: 1-20-13
☐ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☒ Other (explain): Unlawful Detention

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Clarkson S. Fisher Building and Courthouse
Trenton, New Jersey(b) Docket number, case number, or opinion number: 3:12-CR-204-01(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
Penalties and illegal enhancements imposed being sentenced outside of the
Guidelines.(d) Date of the decision or action: 1-20-13**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: United States Court of Appeals
for the Third Circuit.(2) Date of filing: N/A(3) Docket number, case number, or opinion number: 17-2641 (AET)(4) Result: Denied - Conviction affirmed(5) Date of result: 4-5-17(6) Issues raised: Prosecutory Misconduct, violation of pre-trial (Brady)
materials, etc...

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(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: Decided to file a 2255 Petition.

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal: Decided to file a
2255 petition

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☒ Yes ☐ No

If "Yes," provide:

- * (1) Name of court: Clarkson S. Fisher Bldg. & US Courthouse/Trenton New Jersey
- (2) Case number: 17-2641 (Doc #1)
- (3) Date of filing: 4-18-17
- (4) Result: Pending
- (5) Date of result: N/A
- (6) Issues raised: Government refused to answer multiple Show Cause Orders that led to a sixteen (16) month delay for a Response. Government conceded by waiver to not address relative conduct and supposed investors' hardship claims; this avoidance to address loss calculation proves the loss amount is undisputed and not \$2,550,507.28, but actually \$529,000 which means Petitioner's Guideline Range is between 47-57 months; and not 108 months he was sentenced to.

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: Petitioner's 2255 petition is adequate, however; Petitioner by law has filed his 2241 Petition to address the fact that he is now living an exceeding sentence at 62 months and counting past the correct Guidelines of 47-57 months. By law, Petitioner is now being illegally detained under §2241(c)(3) in violation of the Constitution or laws or treaties of the United States.

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes☐ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____

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- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____
- _____
- _____
- _____
- _____
- _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☒ Yes☐ No

- (1) Motion to Expedite
 (2) Motion to Rule (8) Evidentiary Hearing
 (3) Motion Rule (7) to Expand the Record

If "Yes," provide:

- (a) Kind of petition, motion, or application: (4) Writ of Mandamus (Motion)
- (b) Name of the authority, agency, or court: Clarkson S. Fisher Building & U.S. Courthouse
 Trenton, New Jersey

(c) Date of filing: (1) 8-6-18; (2) 9-25-18; (3) N/A

(d) Docket number, case number, or opinion number: (1) Doc #40, (2) Doc #47, (3) Doc #

(e) Result: All pending (Except Mandamus) 12,14,17,21

(f) Date of result: writ of Mandamus dismissed at Petitioner's request on 9-17-18

(g) Issues raised: Overdue delays on the part of the District Court and the Government due to the Government desire to avoid disputable overwhelming evidence in support of Petitioner for both wrongful conviction (Ineffective Asst. of Counsel) and improper enhancement and plain harmful errors by the District Court in illegally sentencing Petitioner outside the Federal Guidelines.

Grounds for Your Challenge in This Petition

- 13.** State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Improper Methodology used by the Government at Sentencing causing Petitioner to be sentenced outside the correct guidelines.

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(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Post Trial, the Government submitted (and the Court adopted) statistical extrapolation evidence for how it reached its figures of loss. Charts used both at trial and sentencing the Government admitted that the charts were not all correct and the Court refused to have an evidentiary hearing to settle loss calculation and supposed victims' hardship pertaining to loss amount. This error was harmful.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes☐ No

GROUND TWO: Government's Post Trial admission that there were "modifications" to investor's original agreements" that affected any (all) claims to relative conduct and supposed victim's hardship (false) claims that created an illegal enhancement by the Court at sentencing.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

The Government post-trial admission came about after the Court decided to order a 3rd party forensic accounting. Expert testimony was provided that investors did not have any loss nor had hardship. The Government admitted to the same findings as the Expert Accountant that investors had modified their investor agreements into other ongoing projects still in operation while also; there was no relative misconduct done on the part of the Defendant

(Petitioner)

(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes☐ No

GROUND THREE: No fact finding required by the Government for sentencing that led to multiple errors leaving Petitioner to be illegally sentenced above the appropriate Guideline-Range.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

The Government's lack of fact finding to provide a fair assessment, while probation officer's shall prepare a complete accounting of each of the victims losses. They are required to provide notice to each of the victims and afford them an opportunity to submit affidavits detailing their losses. Evidence provided to the Court proves unrefutably that this did not occur. Government's own admission that they did not investigate relative conduct or harmful admission that they did not investigate relative conduct or harmful loss to victims.

(b) Did you present Ground Three in all appeals that were available to you?

☒ Yes☐ No

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GROUND FOUR: Court committed harmful error(s) by miscalculating Petitioner's Sentencing Guideline Range

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

The Court reversed its decision to allow certified affidavits for sentencing; by not allowing business partners of Petitioner (such as Kenneth Chucky Atkins submission affidavit that he is not owed \$364,000) that led to a miscalculation of loss, relative conduct and hardship. This decision by the Court committed significant procedural error, that led to an improper interpretation and application of the Guidelines at sentencing.

(b) Did you present Ground Four in all appeals that were available to you?

☒ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Order an immediate release from custody because, Petitioner has out-lived his incarceration of the correct Guideline Range of 47-57 months. At the time of his 2241 filing, Petitioner has been incarcerated 62 months and counting illegally; and for such other and further relief deemed proper and necessary in the interest of Justice.

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

12-12-18

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 12-12-18



Signature of Petitioner

Signature of Attorney or other authorized person, if any

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Instructions

1. **Who Should Use This Form.** You should use this form if
 - you are a federal prisoner and you wish to challenge the way your sentence is being carried out (*for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits*);
 - you are in federal or state custody because of something other than a judgment of conviction (*for example, you are in pretrial detention or are awaiting extradition*); or
 - you are alleging that you are illegally detained in immigration custody.
2. **Who Should Not Use This Form.** You should not use this form if
 - you are challenging the validity of a federal judgment of conviction and sentence (*these challenges are generally raised in a motion under 28 U.S.C. § 2255*);
 - you are challenging the validity of a state judgment of conviction and sentence (*these challenges are generally raised in a petition under 28 U.S.C. § 2254*); or
 - you are challenging a final order of removal in an immigration case (*these challenges are generally raised in a petition for review directly with a United States Court of Appeals*).
3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. A false statement may lead to prosecution.
4. **Answer all the questions.** You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**
5. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.
6. **Required Filing Fee.** You must include the \$5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.
7. **Submitting Documents to the Court.** Mail your petition and _____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.
8. **Change of Address.** You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

December 19, 2018

To Whom It May Concern:

Please accept this submission of a Petition for a Writ of Habeas Corpus under 28 USC 2241 on behalf of C. Tate George who is a prisoner at Allenwood Low Facility. Included is one full copy with attachments, and one copy (barring complete exhibits to save resources) to be file-stamped and returned to Mr. George at:

**C. Tate George Fed #: 63223-050
FCI Allenwood Low
P.O.Box 1000
White Deer, PA 17887**

If you have any questions, I can be reached at (413) 464-2013.

Thank you so much,

Nicoline Steinert (fiancée of Mr. George)

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FROM: Nicoline Steinert
C/O C. Tate George
2414 28th St BSMW
Astoria NY 11102

TO: U.S. District Court
Middle District of Pen
P.O. Box 1148
235 N. Washington Av
Scranton, PA 18501-



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